

**REMARKS**

Applicants have amended claims 1-5, 14-17, 22-30, 34, 35, 39-41, and 44-47. Claims 1-47 remain in the application. Reconsideration and reexamination of the application, as amended, is requested.

**I. REJECTION UNDER 35 U.S.C. §112 ¶2**

In page 2, para. 1 of the Office Action, claims 1-27 were rejected under 35 U.S.C. §112 ¶2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. The Applicants respectfully traverse the rejection.

The Office action cites the "moisture basis" language in claims 1, 14-17, and 27 as the basis for the rejection. Moisture basis is a common term used in the food industry to refer to moisture content. For example, moisture basis can be expressed as an "as is" moisture basis or the moisture content at a certain time, a "fixed" moisture basis, *e.g.*, 42% moisture basis or 42 grams of water per 100 grams of bread, or as a dry basis, *i.e.*, 0% moisture basis (commonly used in food nutrition labels).

In claims 1-27, the Applicants recite a weight percentage of a grain/seed source of soluble fiber and a processed source of fiber based on a 42% moisture basis of the bread product, *i.e.*, a 100g bread product having a moisture content of 42 grams of water. The Applicants selected a bread product having a 42% moisture basis as a reference and have recited corresponding weight percentages of types of soluble fiber relative to the total weight of the bread product having the recited moisture basis reference.

Accordingly, Applicants respectfully submit that no claim amendments are necessary and that claims 1-27, as originally filed, particularly point out and distinctly claim the subject matter which the applicant regards as the invention. To further clarify the claims, however, Applicants have amended claims 1-5, 14-17, 24-30, 34, 35, 39-41, and 44-47 to recite that the percentages (wt%) are based on a weight of the baked bread product, weight of the composition, or weight of the grain, nuts and/or seeds in the bread product, as appropriate. Claims 22 and 23 have also been amended to further clarify that "GI" refers to glycemic index.

Based on the amendments and forgoing remarks, Applicants respectfully request that the rejection under 35 U.S.C. §112 ¶2 be withdrawn.

## II. REJECTIONS UNDER 35 U.S.C. 103(a)

### A. The Office Action Rejections

In pages 2-5 of the Office action, claims 1-47 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,961,937 to Rudel. ("Rudel") in view of U.S. Patent No. 6,248,375 to Gilles et al. ("Gilles"). The Applicants respectfully traverse the rejection. However, to expedite prosecution of the application, Applicants offer amendments to claims 1 and 28 and the following remarks.

### B. Claims 1-47 are Patentable over Rudel in View of Gilles.

The subject application generally discloses a baked bread product, such as a roll or a bagel, that has a low glycemic index and a composition that can be used to make the bread product. The baked bread product includes a wheat flour product, a grain/seed source of soluble fiber, and a processed source of soluble fiber. The bread product has a total soluble fiber content of at least about 0.8% of the weight of the bread product when the bread product has a 42% moisture basis or, in other words, 42 grams of water per 100 grams of bread product. The bread product has a beta-glucan content of at least about 0.2% of the weight of the bread product based on a 42% moisture basis. The composition for making the low glycemic index bread product includes a wheat flour product, a grain/seed source of soluble fiber, and a processed source of soluble fiber. The composition contains grain, nuts, and/or seeds of sufficient size so that at least about 20% of the total weight of the grain, nuts and/or seeds in the composition is retained by a sieve having a 12 US mesh sieve size.

The Rudel patent describes a composition that extends the shelf life of a bread product. The composition includes a milled oat groat product and high gluten wheat flour. Specifically, the composition includes sufficient gluten flour to produce a vital gluten content of at least 17% of the mixture, and sufficient wheat flour to produce a soluble oat dietary fiber content of from

0.2% to 56% of the vital gluten. (col. 11, lines 12-18.) Such a combination dilutes the amount of starch in the composition resulting in a higher gluten to starch ratio than standard baking flours. Thus, the starch component of the bread product is diluted by increasing protein and adding soluble fiber to increase the moisture of the bread product, to reduce staling of the bread product, thereby increasing the shelf life of the bread product.

To establish prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. MPEP §2143.03. The Rudel patent, however, fails to disclose, teach or suggest a number of aspects of Applicants' independent claims 1 and 28.

With regard to independent claim 1, while the Rudel patent may describe a wheat flour product and a processed source of soluble fiber, the cited patent does not disclose or suggest the total soluble fiber content being at least about 0.8% of the weight of the baked bread product on a 42% moisture basis or "a total beta-glucan content of at least about 0.2% on a 42% moisture basis." There are no such contents and percentages recited in the Rudel patent.

Further, the Rudel patent is not related to providing a low glycemic index, much less "wherein the amounts of the grain/seed source of soluble fiber and the processed source of soluble fiber are selected to provide a low glycemic index." Rather, the Rudel patent is specifically concerned with prolonging shelf life. In fact, the patent does not even mention or discuss glycemic index, reducing the glycemic index, providing a low glycemic index, much less selecting a grain/seed source of soluble fiber and a processed source of soluble fiber to provide a low glycemic index.

With regard to independent claim 28, the Rudel patent also fails to disclose or suggest the composition having "an amount of grain, nuts, and/or seeds of sufficient size so that at least about 20 wt.% of the total weight of the grain, nuts and/or seeds in the composition is retained by a sieve having a 12 US mesh sieve size." No such content and percentages are recited in the Rudel patent. Moreover, as previously discussed, the Rudel does not disclose or relate to reducing the glycemic index of the baked bread product.

The Gilles patent fails to cure the deficiencies of the Rudel patent. The Gilles patent describes a nutritional matrix that includes fat, protein, and a two component carbohydrate

system. The two component carbohydrate system blunts or represses glycemic response after a meal. The two component carbohydrate system specifically includes: 1. fructose or a source of fructose, and 2. a nonabsorbent carbohydrate. (col. 4, lines 42-46). The fructose component provides sweetness and a glycemic index of 30. The typical amount of fructose is from about 65 wt/wt% to about 100 wt/wt% of the two component system, and preferably from about 70 wt/wt% to about 80% of the two component system. (col. 6, lines 52-63). The second component of the two-part system, the nonabsorbent carbohydrate, comprises less than or equal to about 35 wt/wt% of the two component system, preferably from about 10-30% wt/wt%. (col. 6, lines 20-63).

The Gilles patent, however, also fails to disclose or suggest a bread product having a total soluble fiber content of at least about 0.8% on a 42% moisture basis and a total beta-glucan content of at least about 0.2% on a 42% moisture basis, as recited in claim 1. Moreover, like the Rudel patent, the Gilles patent does not disclose or suggest selecting amounts of the grain/seed source of soluble fiber and the processed source of soluble fiber to provide a low glycemic index. Rather, the Gilles patent merely mentions that the first carbohydrate component or fructose has a glycemic index of 30. Merely mentioning the glycemic index of fructose, however, does not constitute disclosing or suggesting selecting amounts of the grain/seed source of soluble fiber and the processed source of soluble fiber for the purpose of providing low glycemic index.

Accordingly, each of the Rudel and Gilles patents fails to disclose or suggest a number of aspects of Applicants' claims 1 and 28 and the combination of these patents does not form the claimed invention. Consequently, the rejection under 35 U.S.C. §103(a) cannot be maintained. MPEP §2143.03.

Furthermore, there is no suggestion or motivation to combine the Rudel and Gilles references in light of their different compositions and uses. Merely because references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination." MPEP §2143.01. The Rudel patent describes a bread product having longer shelf life and is not at all related to glycemic index or reducing glycemic index, whereas the Gilles patent involves a bread product with reduced starch content

for reducing blood sugar levels following a meal. Considering these different products and functions, a person of ordinary skill in the art would not be motivated to combine the Rudel and Gilles patents.

Based on the forgoing, the Rudel and Gilles patents, alone or in combination, do not disclose or suggest all of the limitations of Applicants' independent claims 1 or 28, and there is no motivation or suggestion to combine the references. Thus, Applicants respectfully submit that claims 1 and 28 are allowable over the cited references. Further, Applicants respectfully submit that dependent claims 2-27 and 29-47, which depend from respective independent claims 1 and 28, are also allowable since these dependent claims recite further novel and non-obvious limitations and incorporate all of the limitations of respective independent claims 1 and 28. Correspondingly, Applicants respectfully request that the rejection of claims 1-47 under 35 U.S.C. § 103(a) be withdrawn.

**III. CONCLUSION**

In view of the foregoing, Applicants respectfully submit that they have disclosed and claimed a novel and unobvious invention distinguishable from the cited references, individually or in combination. Accordingly, Applicants respectfully request that a timely Notice of Allowance be issued in this case. Further, Applicants note the Examiner's comments regarding the references cited and respectfully request an initialed copy of Form 1449 indicating the references that were considered. If there are any remaining issues that can be resolved by telephone, Applicants invite the Examiner to contact the undersigned at the number indicated below.

Respectfully submitted,

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